

**FACILITY AUDIT AGREEMENT**  
between the  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
and the  
**U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS**

**I. INTRODUCTION**

In recognition that environmental auditing plays a critical role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations of environmental regulations, the U.S. Department of Justice, Federal Bureau of Prisons (BOP) and the United States Environmental Protection Agency, Region 3 (the Region) hereby agree that the BOP shall conduct a self-audit program (the Audit Program) for compliance with the regulations promulgated or authorized by the United States Environmental Protection Agency (EPA) set forth in Section II below for the facilities listed in Appendix A. The Facility Audit Agreement (Agreement) shall be governed by the terms of EPA's Policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Federal Register 19618 (4/11/00, the Policy), except to the extent that those terms are explicitly modified below.

**II. SCOPE OF THE AUDIT**

- A. The BOP shall conduct an audit (the Audit) of its compliance with the regulations cited below in subsections 1 - 6 of Section II.B and any permits issued pursuant to those regulations. The Audit will encompass all facilities listed in Appendix A.
- B. Under the Audit Program, the BOP will audit compliance with the following federal regulatory programs:

1. Air Programs

- Part 52<sup>1</sup> Section 21 Prevention of Significant Deterioration of Air Quality
- Part 60 Standards of Performance for New Stationary Sources
- Part 61 National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos
- Part 63 National Emission Standards for Hazardous Air Pollutants for Source Categories (all applicable provisions)
- Part 68 Chemical Accident Prevention Provisions
- Part 70 State Operating Permit Programs
- Part 82 Protection of Stratospheric Ozone

All applicable provisions of the above; and the Philadelphia, Allegheny County, Pennsylvania, Maryland, Virginia, and West Virginia State Implementation Plan

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<sup>1</sup> The term "Part" refers to the subdivisions of the subchapters of Title 40 Code of Federal Regulations (C.F.R.).

Regulations (promulgated pursuant to Section 110 of the Clean Air Act) including the New Source Review regulations at 40 C.F.R. Part 51, Subpart I.

## 2. Water Programs

- Part 112 Oil Pollution Prevention
- Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System
- Part 141 National Primary Drinking Water Regulations
- Part 142 National Primary Drinking Water Regulations Implementation
- Part 143 National Secondary Drinking Water Regulations
- Part 144 Underground Injection Control ("UIC") Program
- Part 145 State UIC Program Requirements
- Part 146 UIC Program: Criteria and Standards
- Part 147 State UIC Programs
- Part 148 Hazardous Waste Injection Restrictions
- Part 403 General Pretreatment Regulations for Existing and New Sources of Pollution

## 3. Pesticide Programs

- Part 162 State Registration of Pesticide Products
- Part 170 Worker Protection Standard
- Part 171 Certification of Pesticide Applicators
- Part 172 Experimental Use Permits

## 4. Solid and Hazardous Wastes

- Part 260 Hazardous Waste Management System: General
- Part 261 Identification and Listing of Hazardous Waste
- Part 262 Standards Applicable to Generators of Hazardous Waste
- Part 263 Standards Applicable to Transporters of Hazardous Waste
- Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Part 265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Part 266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
- Part 268 Land Disposal Restrictions
- Part 273 Standards for Universal Waste Management
- Part 279 Standards for the Management of Used Oil
- Part 280 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs)

The States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania have been authorized by the EPA to operate state hazardous waste management programs in lieu of the federal program. Once authorized, a state regulation becomes the applicable regulation. [See, Section 3006(b) of Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6926(b)]. For purposes of this Agreement, the institution will audit for compliance with authorized state counterparts of the federal regulations, where applicable.

5. Hazardous Substances and Chemicals, Environmental Response, Emergency Planning, and Community Right-to-Know Programs

Part 302 Designation, Reportable Quantities, and Notification

Part 355 Emergency Planning and Notification

Part 370 Hazardous Chemical Reporting: Community Right-to-Know

Part 372 Toxic Chemical Release Reporting: Community Right-to-Know

6. Toxic Substances

Part 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures

Part 761 Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions

Part 763 Asbestos

C. The benefits of this Agreement shall extend to only those facilities that are audited.

### III. DISCLOSURE

The BOP shall disclose all EPA-enforceable regulatory violations discovered during the Audit. The BOP will voluntarily disclose these violations to the Region, in accordance with the Policy, in written disclosure reports to be submitted in accordance with the schedule set forth below in Section IV. Each such disclosure report shall contain, with reference to each violation disclosed, the following additional information: the actions selected by the BOP to correct the violation within sixty (60) days, or as otherwise approved pursuant to Section V below; the status of the corrective action; and the means taken by the BOP to prevent recurrence of the violation. All disclosure reports will be submitted by the scheduled date, and the Region agrees to waive the twenty-one (21) day disclosure requirement provided for in the Policy.

Once the action designed to correct a particular violation has been completed, and a report submitted to the Region notifying it of the completion of the corrective action, no further reporting on that violation, or the status of corrective action, is required. On July

31, 2010, this Agreement shall terminate for all purposes, except that the BOP shall remain obligated to complete the action necessary to correct any disclosed violation, and to report to the Region in writing (1) the completion of any corrective action, previously unreported, within thirty (30) days after such corrective action has been completed, and (2) the costs of coming into compliance for each violation disclosed under this Audit Agreement, and the amount of pollutants no longer released to the environment as a result of the corrective actions.

This Audit Agreement does not cover any pre-Agreement activities, including regulatory compliance issues discovered by the BOP or its environmental consultant(s) prior to the effective date of this Agreement, with the exception of those regulatory compliance issues discovered by the BOP or its environmental consultant(s) with respect to the audits performed at the USP Canaan (Pennsylvania), FCI Loretto (Pennsylvania), and FCI Cumberland (Maryland) facilities.

#### **IV. SCHEDULE**

- A. The BOP has contracted with Archer, Inc to perform three (3) initial audits at the USP Canaan (Pennsylvania), FCI Loretto (Pennsylvania), and FCI Cumberland (Maryland) facilities. In addition to performing the three (3) initial audits, Archer, Inc. shall identify the applicable criteria pursuant to which each regulatory program audit shall be conducted. The BOP shall submit to the Region the audit protocols and audit checklists for each of the regulatory program audits, tailored to the BOP facilities, and shall provide copies of these audit instruments to the Region. The BOP is willing to share any materials it develops with other institutions and the U.S. Environmental Protection Agency. After the three (3) initial audits, the BOP will thereafter conduct the audits for the remaining facilities using personnel from within the BOP or a contractor using the audit protocols and audit checklists previously developed by Archer, Inc.
- B. Within 30 days of the signing of the agreement, the Audit shall commence.
- C. The BOP shall complete the regulatory audits required by this Agreement, and shall submit disclosure reports to the Region, in accordance with the Policy and the Agreement, identifying all EPA-enforceable violations discovered during the course of these audits according to the schedule set forth in Appendix A.

#### **V. CORRECTIVE ACTION**

The BOP shall correct each violation identified during the Audit, and shall take steps necessary to prevent the recurrence of each such violation. The BOP shall correct any violations identified during the Audit as soon as possible, but within sixty (60) days of discovery. In those instances in which the BOP is unable to correct an identified violation within the sixty (60) day deadline, it shall request an extension of time from the Region in writing and provide a correction schedule, accompanied by a justification of



the requested extension. Any extension of the sixty (60) day correction period shall be subject to the Region's approval. Such approval will not be unreasonably withheld.

If the BOP discovers or otherwise becomes aware of a concern or concerns that may present an imminent and substantial endangerment to human health or the environment, and such concern(s) may exist at other BOP facilities covered by this Agreement, notwithstanding any other language herein to the contrary, the BOP agrees to address such concern(s) at all covered facilities as expeditiously as possible and promptly take such action as may be necessary at all facilities to protect human health and the environment. The BOP shall notify the Region (initial notice may be by phone) of such concern(s) within 24 hours of discovery or becoming aware of such concern(s) and shall notify the Region in writing within five (5) business days of such discovery of the BOP's proposed remedial action to the Region's contact person identified in section VIII.A.

## **VI. CIVIL PENALTIES FOR DISCLOSED VIOLATIONS**

Except as provided in Section II.D.8 of the Policy, the Region will not impose gravity-based penalties for violations voluntarily discovered if they are timely disclosed and corrected, and provided that the applicable provisions of the Policy and this Agreement are met. Where any disclosed violations entail economic benefits because of delayed or avoided expenditures by BOP on environmental compliance measures, the economic benefit for such corrective measures will be calculated and assessed as a penalty, unless the economic benefits are considered de minimis and waived by the Region. The Region will consider the least expensive means for coming into compliance in calculating potential economic benefit penalties for any disclosed violations, provided that such methods comply with regulatory requirements.

## **VII. EPA INSPECTIONS**

Nothing in this Agreement shall limit the authority of EPA to conduct any inspections or information gathering under any applicable Federal law. Any civil violation discovered in a facility within the scope of the audits, which was scheduled to be audited subsequent to such discovery, shall be treated as a disclosure by the BOP and resolved under the terms of the Policy and this Agreement. Additionally, EPA retains the right to conduct during the audits the inspections set forth below:

A. Oversight Inspections - Where the BOP has reported a violation which requires corrective action in the nature of a cleanup of contaminated soil or water, EPA shall have the right to conduct inspections at the corrective action site for the purpose of overseeing or monitoring the cleanup to assure appropriate correction of the violation.

B. Confirmation Inspections - Where the BOP has disclosed a violation, selected a corrective action plan and reported that the plan has been completed and the violation cured, EPA shall have the right to inspect the relevant facility to

assure that the violation has in fact been corrected, or to require further appropriate corrective action, if it has not.

## VIII. MISCELLANEOUS PROVISIONS

- A. Notification and Certification of Disclosure Reports: The BOP designates as its "responsible official," Charles Procaccini, Chief of Facilities Programs.

The responsible official shall certify that each disclosure report submitted to the Region is true, accurate and complete in the form set forth in 40 C.F.R. §270.11(d).

The BOP designates as its "contact person," to be the recipient of all communications from the Region concerning this Agreement and responsible for submitting each facility's disclosure reports to the Region, the following individual:

Robert Scinta, Environmental Programs Manager  
Facilities Management Branch - Central Office  
500 1<sup>st</sup> Street N.W., 8<sup>th</sup> Floor  
WASHINGTON, DC 20534  
Phone: (202) 514-6652

The Region designates the following individual as its contact person:

José Jiménez (3EC00)  
Federal Facilities Coordinator  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Phone: (215) 814-2148  
Fax: (212) 814-2905  
[jimenez.jose@epa.gov](mailto:jimenez.jose@epa.gov)

The parties may redesignate their contact person and responsible official in writing.

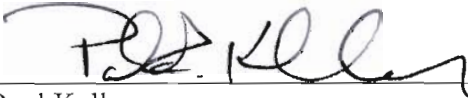
- B. Compliance with Law and Regulation: Neither the existence of this Agreement, nor compliance with this Agreement relieves the BOP of its obligation of continued compliance with the regulations covered by this Agreement, and all other federal, state and local laws, regulations, and permits.

- C. Reservation of Rights: The Region reserves its rights to proceed against the BOP for all violations outside the scope of the Audit, and violations within the scope of the Audit that were not timely reported or timely corrected. In any enforcement proceeding, the Region may enforce the provision of 40 C.F.R. allegedly violated, or its authorized or approved state counterpart, if said counterpart is federally enforceable as a matter of law. EPA reserves the right to commence action in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This Agreement is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law.
- D. Authority of Signatories: The signatories hereto represent that they have the authority to bind the parties.
- E. Modification: This Agreement may be modified by a writing signed by both parties.
- F. Coordination With the State Environmental Agencies: The Region has informed the Philadelphia Air Management Services, the Allegheny County Health Department, the Maryland Department of the Environment, the Pennsylvania Department of Environmental Protection, the Virginia Department of Environmental Quality, the West Virginia Department of Environmental Protection of this Agreement and shall provide a copy of this Agreement to these entities. Nothing herein restricts these entities from acting as they deem appropriate.

- G. Effective Date: This Agreement is effective on the date that it is signed by both parties, or the last party if not signed on the same date.

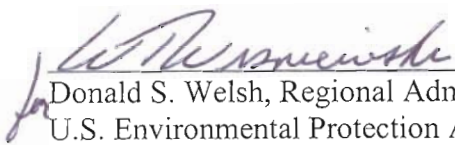
WE, THE UNDERSIGNED, HEREBY AGREE TO BE BOUND BY THIS AGREEMENT:

For the Federal Bureau of Prisons:

  
Paul Keller  
Chief, Facilities Management Branch – Central Office  
Federal Bureau of Prisons  
500 1<sup>st</sup> Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20001

Date: 6/11/07

For EPA - Region 3:

  
Donald S. Welsh, Regional Administrator  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 6/18/07



**Appendix A**  
**SCHEDULE OF AUDITS**

<b>Facility</b>	<b>Location</b>	<b>Date Disclosure Report will be Submitted</b>
United States Penitentiary-Canaan	3057 Easton Turnpike Waymart, PA 18472	within thirty days of the effective date of the agreement
Federal Correctional Institution (FCI) in Loretto	Rural Route 276 Loretto, PA 15940	within thirty days of the effective date of the agreement
Federal Correctional Institution (FCI) Cumberland	14601 Burbidge Road SE Cumberland, MD 21502	within thirty days of the effective date of the agreement
Allenwood Federal Correctional Complex (FCC)		October 31, 2007
Federal Correctional Institution (FCI) – Allenwood Low	Route 15, 2 Mi N of Allenwood White Deer, PA 17810	October 31, 2007
Federal Correctional Institution (FCI) - Allenwood Medium	Route 15, 2 Mi N of Allenwood White Deer, PA 17810	October 31, 2007
United States Penitentiary (USP) Allenwood	Route 15, 2 Mi N of Allenwood Allenwood, PA 17810	October 31, 2007
United States Penitentiary (USP) in Lewisburg	2400 Robert F. Miller Drive Lewisburg, PA 17837	November 30, 2007
Federal Correctional Institution (FCI) - McKean	Route 59 & Big Shanty Rd. Lewis Run, PA 16738	April 30, 2008
Federal Correctional Institution (FCI) - Schuylkill	Interstate 81 & 901 W Minersville, PA 17954	April 30, 2008
Federal Detention Center (FDC) in Philadelphia	700 Arch Street Philadelphia, PA 19106	October 31, 2008
The United States Penitentiary (USP) - Lee	Hickory Flats Road Pennington Gap, VA 24277	November 30, 2008
Federal Correctional Institution (FCI) Gilmer	201 FCI Lane Glenville, WV 26351	May 31, 2009

<b>Facility</b>	<b>Location</b>	<b>Date Disclosure Report will be Submitted</b>
The Federal Correctional Institution (FCI) Beckley	1600 Industrial Road Beaver, WV 25813	October 31, 2009
FPC Alderson	Glen Ray Rd., Box A Alderson, WV 24910	November 30, 2009
FCI Morgantown	446 Greenbag Road, Route 857 Morgantown, WV 26501	April 30, 2010
The United States Penitentiary (USP) - Hazelton	Sky View Drive Bruceton Mills, WV 26525	May 31, 2010